

162670



United States General Accounting Office
Washington, DC 20548

Comptroller General
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Decision

Matter of: A&T Engineering Technologies, VECTOR Research Division

File: B-282670; B-282670.2

Date: August 13, 1999

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., and Jennifer A. Mahar, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for the protester.
Thomas P. Humphrey, Esq., John E. McCarthy, Jr., Esq., and Daniel R. Forman, Esq., Crowell & Moring, for Marconi Systems Technologies, Inc., an interested party.
Chris E. Hagberg, Esq., Department of the Navy, for the agency.
Ralph O. White, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protester's allegation of an improper "bait and switch" scheme based on an e-mail note sent by an employee of the awardee to an incumbent employee seeking a job with the new contractor which states that the awardee does not have "people waiting in the wings to work on this contract" is denied where there is no showing in the record that the awardee has misrepresented the availability or commitment of its personnel; the awardee's proposal offered to hire incumbents in accordance with the substitution of key personnel clause, while explaining that it had no information at the time of proposal submission about the availability of those incumbents; the solicitation does not bar substitution of personnel when directed by the agency; and there is no other evidence in the record to support the interpretation of the e-mail note urged by the protester.
2. Protester's contention that the agency improperly evaluated its proposed personnel is denied where the record shows that the evaluation was consistent with the stated evaluation criteria and reasonable.

DECISION

A&T Engineering Technologies, VECTOR Research Division protests the award of a contract to Marconi Systems Technologies, Inc. under request for proposals (RFP) No. N00167-98-R-0027, issued by the Department of the Navy, Naval Surface Warfare Center, for scientific and engineering support services for the Navy's Acoustic

Research Detachment (ARD), located at Lake Pend Oreille in Bayview, Idaho. VECTOR argues that Marconi is engaged in a "bait and switch" scheme by offering key personnel that it does not expect to use during contract performance. In addition, VECTOR contends that the Navy misevaluated its proposal.

We deny the protest.

BACKGROUND

The Navy's ARD conducts acoustic research and analysis in support of stealth technology for submarine programs. To accomplish this mission, ARD maintains test facilities, including acoustic ranges, on Lake Pend Oreille, a large freshwater lake located in the Idaho panhandle with depths exceeding 1,100 feet. At Lake Pend Oreille, the Navy operates and maintains the KOKANEE (also referred to as Large Scale Vehicle-1 (LSV-1)), which is an unmanned, self-propelled, 1/4-scale submarine, approximately 10 feet in diameter, and 90 feet long. The KOKANEE is used for "hydrodynamic, acoustic, and structural Research, Development, Test and Evaluation (RD'T&E) of subsea technology for the Navy." RFP at 7. In addition to the KOKANEE, the Navy maintains other large models, floating platforms, and research laboratories at its ARD facilities.

The RFP, issued April 24, 1998, anticipates award of an indefinite-quantity, indefinite-delivery, cost-plus-fixed-fee contract, for a period of 5 years, to the offeror whose proposal represents the best value to the government. RFP at 2, 145. The RFP sets forth two separate tasks. Task I covers the operation, maintenance, and logistical support of the KOKANEE (including its hull, mechanical, electrical, and other systems), and of the equipment used on board the vessel for acoustic research. Task II covers the operation, maintenance, and logistic support of other vehicles, data acquisition systems, and facilities, related to other ARD research activities. Task II could also include special installations, upgrades, or modifications to the KOKANEE. RFP at 6-7.

The RFP requires different staffing approaches for task I and task II. For task I—the operation and support of the KOKANEE—the RFP requires offerors to propose the labor categories, designate which should be considered key, and propose the necessary labor hours. RFP at 118. The Navy explained that it adopted this approach because the task I efforts have been the same for more than 10 years, which led it to conclude that offerors should be able to structure their own approach to meeting the agency's needs. Letter from Contracting Officer to VECTOR 1 (June 17, 1998). Since the task II efforts were considered less definite, *id.*, the RFP specifies which labor categories would be considered key and identifies the necessary hours. RFP at 121-22. Once an offeror identifies its key personnel for the two tasks, the RFP's "Substitution or Addition of Key Personnel" clause dictates additional requirements. For example, the clause bars substitutions or additions of personnel not made in accordance with the clause, and provides that during the first

180 days of contract performance, substitutions or additions will be made only for sudden illness, death, or termination of employment. RFP at 43-44.

To select the proposal offering the best value, the RFP identifies five evaluation factors, in descending order of importance:

- I. Task I Technical Understanding, Approach and Staffing
- II. Task II Technical Understanding, Approach and Staffing
- III. Past Performance
- IV. Corporate Experience
- V. Management Plan

Regarding these five factors, the RFP provides the following guidance to offerors: factor I is more important than factor II, past performance is approximately half as important as factor II, corporate experience is two-thirds as important as past performance, and management plan is slightly more than one-half as important as corporate experience. RFP at 145.

In addition, the RFP identifies numerous separate subfactors under each of the five evaluation factors identified above, as well as separate elements under those subfactors—most of which need not be identified here. Of relevance to this decision are the subfactors under the task I and task II evaluation factors. Under task I, the RFP identifies: (A) technical understanding/approach; (B) staffing plan; (C) proposed personnel; (D) task I management plan; (E) on-going personnel qualification and training plan; and (F) transition plan.¹ RFP at 145-47. Under task II, the RFP identifies: (A) technical understanding/approach; (B) proposed key personnel; (C) non-key personnel; (D) response to sample delivery order # 1; and (E) response to sample delivery order # 2.² RFP at 147-53.

By the initial closing date of July 7, the Navy received two proposals—one from Marconi and one from Vector. The Marconi proposal identified two teaming subcontractors—Planning Systems, Inc. (PSI) and SAIC. The VECTOR proposal identified ManTech Advanced Systems International, Inc., as a teaming partner. In

¹ In regard to these subfactors, the RFP explains that subfactor C is most important; subfactor B is half as important as C; subfactor C is significantly more important than subfactors A, D, E, and F; subfactor A is significantly more important than subfactors D, E, and F; and that subfactors D, E, and F are equal in importance. *Id.*

² In regard to these subfactors, the RFP explains that subfactor B is most important, and more important than all the other subfactors combined; subfactor A is more than twice as important as subfactors C, D, and E; and that subfactors C, D, and E are of equal importance. *Id.* at 147.

general terms, both offerors can be considered incumbents. Marconi³ has been providing services similar to those included in task I; VECTOR—as a subcontractor to ManTech—has been providing services similar to those included in task II. As described above, the instant solicitation combines the work of two predecessor contracts. AR at 3-4.

After the initial evaluation, negotiations, and submission of revised and final proposals, the Navy assigned the following point scores and evaluated costs to the two proposals:

EVALUATION CATEGORY	AVAILABLE POINTS	VECTOR	MARCONI
Task I	205	136.1	172.8
Task II	155	125.3	127.6
Past Performance	75	66.9	64.4
Corp. Experience	50	37.5	39.3
Management Plan	30	23.5	24.3
Total Points	515	389.3	428.3
Evaluated Cost		[deleted]	\$42.1 million

Business Clearance Memorandum, Apr. 16, 1999, at 6. As shown above, Marconi outscored VECTOR in the task I area (the area where Marconi has prior experience), while the evaluators assessed little difference between Marconi and VECTOR in the task II area—or any of the other evaluation areas. Based on these results, the contracting officer concluded that Marconi's proposal provided the best value to the government because its technical superiority was worth its slightly higher price. *Id.* at 18.

Additional Background Related to the "Bait and Switch" Allegation

On April 27, a Marconi representative met with the contracting officer to execute the contract. Among other things, the contracting officer pointed out to Marconi's representative that its proposed key personnel had been incorporated by name into the contract under the clause governing the substitution of key personnel. Memorandum to File, Apr. 27, 1999; Contract at 47. Also on April 27, the Navy provided notice of the award to VECTOR, and by letter dated the next day, VECTOR requested a debriefing, which was held on May 4.

³The previous contract for task I-type services was awarded to Tracor. Shortly before proposals were submitted for the instant procurement, Marconi purchased Tracor. AR at 16-17.

On April 29, Mr. Robert Dusenberry, one of the ManTech incumbent employees at the Navy facility, contacted by telephone Mr. Scott Vivian, an employee of PSI (one of Marconi's subcontractors). During their conversation, Mr. Dusenberry inquired about joining the winning Marconi team. Mr. Vivian reports that Mr. Dusenberry sent a copy of his resume by e-mail later that day, and Mr. Vivian states that he received a telephone call from a Navy employee at ARD, who spoke highly of Mr. Dusenberry. Declaration of Scott A. Vivian, June 18, 1999, at 2.

The next day, April 30, Mr. Vivian responded to Mr. Dusenberry by e-mail. His response, set forth below in full, is the basis for VECTOR's allegation of an improper "bait and switch" scheme:

I enjoyed talking with you and hope that I reassured you as to our intentions for a smooth transition for the labor force at ARD. We are committed to supporting the Navy's desire to retain the investment they have in your skills and experience with ARD. We expect [the Navy] to direct that most or all ManTech and A&T folks be retained by the new team and this we will gladly do. We certainly do not have people waiting in the wings to work on this contract. All of the people that PSI bid to support ODAS, RNDAAS, etc. are gainfully employed elsewhere and it would be somewhat painful for most of them if they were required to move to Idaho.

Your resume looks great and [a Navy ARD employee] speaks highly of you. I would love to have you join PSI and continue your support to ARD. The plan, as I currently understand it from Ken Troxell (Marconi program manager), is to wait until the protest period ends next Friday, sign the contract, and then begin serious staffing discussions w/ [the Navy]. As I explained yesterday, [Navy] Contracts has indicated that they want ManTech and A&T incumbents hired by the contractor who offers the least cost to the government (i.e. assuming your salary is constant, whoever has the lowest overhead and G&A rates); not based on some prearranged allocation of people to each team member. This means that if PSI has the lowest rates, everyone will come to work for us. I expect [Marconi] to be difficult to beat here since they are the prime and automatically add an additional subcontracting tax to both PSI's and SAIC's rates. In addition, it is highly possible that PSI's rates will be slightly higher due to the excellent benefits package we provide our employees. We believe that this is a key component in attracting and retaining the highest caliber people and have resisted pressure to cut back.

Anyway, I hope [the Navy] gives PSI the opportunity to bring you and some of your fellow ARD coworkers on board. I think you would find PSI to be a very good company to work for with excellent benefits, culture, etc. Let me know if you would like some information on the

company and I will provide it as soon as possible (I'll have to see if its OK to do this prior to the ending of the protest period). Also if you're interested, check us out at www.plansys.com for an overview of the company. I will be in touch as soon as there is any news. Feel free to contact me via email or phone if you have any further questions or concerns (my contact info is repeated at the bottom of this email).

E-Mail from Scott Vivian to Robert Dusenberry (April 30, 1999) (the underlined portions of the message have been highlighted by VECTOR as evidence of an improper "bait and switch" scheme).

Between April 30 and May 4, VECTOR became aware of the above-quoted e-mail message, and during the May 4 debriefing, a VECTOR representative read aloud to the contracting officer portions of the message. After the debriefing, the contracting officer contacted Marconi to inquire about the contents of the e-mail. Although Marconi's representative stated that the company intended to fulfill the requirements of its new contract, including the requirements of the key personnel clause, the contracting officer requested written confirmation, which Marconi provided by letter dated May 6. Memorandum For File, undated.

On May 5, another ManTech employee, Mr. Joseph Sokol, Jr., asked Marconi's current on-site program manager, Mr. Al Mason, about the status of job applications at Marconi. In an affidavit filed with our Office, the ManTech employee testifies that Marconi's manager stated:

We won't have to worry about that for now as we will have to bring people out to fill the contract. And you can thank Bob for that. He needs to watch what he does on e-mail

Declaration of Joseph Sokol, Jr., June 2, 1999, at 1. On May 7, VECTOR filed this protest.

EVALUATION OF KEY PERSONNEL

VECTOR argues that the Navy's evaluation of Marconi's proposal was unreasonable in the area of key personnel because the communications between Mr. Vivian and Mr. Dusenberry, and between Mr. Mason and Mr. Sokol, show that Marconi was not intending to perform the contract as it proposed. According to VECTOR, Marconi intended instead to "bait" the Navy with its proposal, and then "switch" its key personnel by hiring the current employees of the incumbent, VECTOR, and those of VECTOR's proposed subcontractor, ManTech (one of the current prime contractors for these services). Thus, VECTOR argues that Marconi should be disqualified from award, and award should be made to VECTOR.

The Navy and Marconi reply that the e-mail note upon which VECTOR bases its allegation cannot properly be read to reflect an intention to defraud the Navy, or to

corrupt the integrity of the competitive procurement process. Both point out that Marconi's proposed personnel agreed, in writing, to their inclusion in Marconi's proposal; that the personnel Marconi proposed have now been expressly identified in the key personnel portion of the contract; and that Marconi has reiterated its commitment to abide by the contract's key personnel clause. In addition, Marconi argues that the e-mail note does not apply to key employees, and points out that the individual who wrote the e-mail note is an employee of one of its subcontractors who has no authority to either hire personnel, or bind Marconi, in any way.

To demonstrate a "bait and switch," a protester must show that: (1) the awardee represented in its proposal that it would rely on certain specified personnel in performing the services; (2) the agency relied on this representation in evaluating the proposal; and (3) it was foreseeable that the individuals named in the proposal would not be available to perform the contract work. Ann Riley & Assocs., Ltd.-Recon., B-271741.3, Mar. 10, 1997, 97-1 CPD ¶ 122 at 2-3; Combat Sys. Dev. Assocs. Joint Venture, B-259920.6, Nov. 28, 1995, 95-2 CPD ¶ 244 at 2; Free State Reporting, Inc., B-259650, Apr. 14, 1995, 95-1 CPD ¶ 199 at 4.

VECTOR admits that there is no issue here with respect to the first two elements of the "bait and switch" analysis outlined above. With respect to the first element, Marconi's proposal clearly identified 15 key personnel, whom it promised to use in performing these services. Each of the 15 key personnel proposed by Marconi signed a statement consenting to the use of his or her resume in the proposal. Marconi Revised Proposal, Feb. 8, 1999, unnumbered resume pages following pages 115 and 202. In addition, as explained above, each of these key personnel were incorporated by name into the contract, which was signed by a Marconi representative on April 27. Contract at 47. With respect to the second element of the analysis, there is no dispute that the Navy relied upon Marconi's identified personnel in evaluating Marconi's proposal.

The gravamen of this dispute then is whether Mr. Vivian's above-quoted e-mail note is properly read as evidence of an intent by Marconi to renege on its proposal's promise to provide the key personnel upon whom its evaluation was based. Thus, under the Ann Riley analysis above, VECTOR argues that the e-mail note shows that it was foreseeable that the individuals named in the proposal would not be available to perform the work. For the reasons set forth below, we disagree with VECTOR's reading of this note, and conclude that it does not provide evidence of intent to conduct an improper "bait and switch."

As a preliminary matter, we cannot agree with the Navy's and Marconi's contention that the e-mail note does not cover key employees. While Mr. Vivian's e-mail note does not expressly address the subject of key employees, the protester correctly argues that the note reaches at least a portion of Marconi's proposed key personnel. Specifically, the note states that "[a]ll of the people that PSI bid . . . are gainfully employed elsewhere and it would be somewhat painful for most of them if they were required to move to Idaho." Since the note uses the word "all," and since 6 of

Marconi's 15 proposed key personnel are PSI employees, we will assume for purposes of analysis, that the note may have included the 6 key PSI employees.

On the other hand, the e-mail note, as read in full, clearly indicates that Mr. Vivian expects that it will be the Navy that will direct the retention of employees by the new team, and that Marconi will accommodate the Navy. The e-mail in this regard is consistent with Marconi's representations throughout the competition.⁴ While Marconi may have expected the Navy to direct the retention of certain incumbent employees, that does not mean that Marconi misled the Navy by submitting, as the RFP required, its own roster of employees. In this area, we have held that the substitution of incumbent employees with an agency's permission, and where there has been no misrepresentation, is not an improper "bait and switch." USATREX Int'l. Inc., B-275592, B-275592.2, Mar. 6, 1997, 98-1 CPD ¶ 99 at 10; Ebon Research Sys., B-261403, Sept. 28, 1995, 95-2 CPD ¶ 152 at 5.

In this regard, VECTOR complains that expecting the Navy to approve the hiring of incumbent personnel is further evidence of Marconi's plan to violate the key personnel requirements of the contract, because the key personnel clause bars substitutions for the first 180 days after award. VECTOR suggests that any waiver by the Navy of the 180-day bar on substitutions would give rise to another ground of protest—namely that the Navy improperly made award to Marconi with the intention of materially changing the terms after award. See, e.g., KPMG Peat Marwick, LLP, B-259479.2, May 9, 1995, 95-2 CPD ¶ 13 at 12 n.6, recon. denied, Advanced Research Projects Agency-Recon., B-259479.3, July 18, 1995, 95-2 CPD ¶ 26. We disagree. There is no basis in the record here to conclude that the incumbent personnel—presumably VECTOR's personnel (and those of its teammate, MarTech)—are less qualified than the personnel Marconi proposed. Thus, we see no basis to conclude

⁴For example, during discussions the Navy asked both Marconi and VECTOR to identify how they planned to use incumbent personnel. Memorandum from Technical Evaluation Committee to Contracting Officer 2-3 (Mar. 1, 1999). In response, Marconi explained that it was not in a position to identify in advance specific positions to be filled with incumbent personnel because it did not know their availability, their salaries, or their specific qualifications. Marconi Responses to Questions, Mar. 8, 1999, at 9. On the other hand, Marconi expressed its willingness to explore the hiring of incumbent personnel contingent upon whether doing so was in the best interest of the government, and upon the concurrence of the agency. *Id.* This response was consistent with the statement in Marconi's proposal that it would "aggressively pursue the hiring of incumbent staff, with the concurrence of the [contracting officer's representative] and in full compliance of the Substitution and Addition of Key Personnel clause of the RFP." Marconi Revised Proposal, *supra*, at 150. In answering this question, however, Marconi also reiterated its promise to perform with its own personnel in the event incumbent personnel were unavailable. Marconi Responses to Questions, *supra*.

that a waiver of the 180-day bar on substitutions would constitute a material change to the contract.⁶ See B & K Enters., B-276066, May 7, 1997, 97-1 CPD ¶ 166 at 3-4; USATREX Int'l. Inc., *supra*.

Turning next to the specific comments in the e-mail note, we do not read Mr. Vivian's statement that the newly selected contractor does "not have people waiting in the wings to work on this contract," as evidence that Marconi's proposal was prepared in bad faith. In our view, the statement reflects the fact that few, if any, companies can afford to retain an entire cadre of highly-qualified workers on standby in the event the contractor prevails in the competition. We take a similar view of the statements that all of the people bid by PSI are working elsewhere, and that it would be disruptive if they were all required to move to Idaho. As stated above, all of these employees signed a statement granting their permission for Marconi to propose them as key employees, thus all were aware of the possibility they could be summoned to Idaho to work on this contract. Further, we do not regard the reference to the passing of the protest period as evidence that Marconi has something to hide. While we understand that such a comment can be read to raise the questions VECTOR has posed, there are valid reasons, based on economy of effort, for allowing the period for filing a bid protest to pass before investing time and effort in staffing discussions.

In conclusion, since there is no suggestion in this record that Marconi has misrepresented the availability or commitment of its personnel in its proposal; since Marconi consistently voiced its intention to hire available incumbents in accordance with the substitution of key personnel clause; and since the RFP does not bar

⁶VECTOR also argues that Marconi's improper intent is shown by the fact that Marconi's cost proposal did not include relocation costs for its key personnel who were working elsewhere. The record here shows that the Navy noticed the lack of relocation costs and asked Marconi, during discussions, to explain how it would charge such costs. In response, Marconi answered that neither it, nor its subcontractors, would "direct-charge any relocation costs." Letter from Marconi to Navy Answering Mar. 16 Clarification Questions encl. (1) at 3 (Mar. 19, 1999). In its final comments, VECTOR merely repeats its initial contention that the omission of these costs is evidence of Marconi's intended impropriety; VECTOR offers no support for what we must presume is its ancillary contention that not charging such costs directly to the contract is in some way inappropriate here. In our view—and in light of VECTOR's failure to further buttress its contention, as opposed to merely repeating it—there is nothing about Marconi's decision not to charge relocation costs directly to the contract that suggests that Marconi was attempting to mislead the Navy about its key personnel.

substitution of personnel when directed by the Navy, we deny VECTOR's allegation that Marconi was engaged in a "bait and switch" scheme to mislead the Navy.⁶

OTHER EVALUATION ISSUES

In its initial protest, VECTOR argued that the Navy failed to consider its responses to discussion questions, or misevaluated its responses, because all of the proposal's weaknesses identified during the debriefing had been raised during discussions, and answered by VECTOR. During the course of this protest, the Navy showed, and VECTOR acknowledged, that VECTOR's technical scores increased in many areas as a result of the negotiations, leading VECTOR to abandon its claim that the Navy did not consider its discussion responses. VECTOR continues to argue, however, that in three areas the Navy either misevaluated its responses, or failed to raise its concerns with sufficient clarity to permit VECTOR to improve its proposal. These contentions are that the Navy misevaluated VECTOR's responses regarding the proposal's task I staffing plan and proposed personnel, and regarding the hull, maintenance and electrical (HM&E) experience of its task I key and non-key personnel; and that the Navy failed to advise VECTOR of concerns about the part-time nature of its proposed personnel for task II.

In considering a protest against an agency's evaluation of proposals, we will examine the record to determine whether the agency's judgment was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. In addition to the evaluation issues, we will review the adequacy of agency discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Department of the Navy-Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422 at 3. Here, we have considered each of VECTOR's arguments--along with its initial proposal, the agency's evaluation materials and discussion questions, and VECTOR's responses thereto. As a result of our review, we find no basis for concluding that the evaluation was unreasonable or not in accordance with the stated evaluation criteria, or that the Navy failed to adequately

⁶In any event, we note that even if the e-mail note is evidence of an intent to "bait" the Navy, and "switch" later, the record shows that Marconi has reconfirmed its intent to provide the key personnel identified in its proposal. Given this development it is hard to see how VECTOR was prejudiced by an intent that was not carried out. In addition, with respect to VECTOR's contention that Marconi should be barred from consideration for award, such a remedy is reserved for the most serious of material misrepresentations. See Informatics, Inc., B-188566, Jan. 20, 1978, 78-1 CPD ¶ 53 at 13 (misrepresentation of results of a survey of the availability of incumbent's personnel, exclusion recommended). Here, even if we agreed with VECTOR, and we do not, we would not recommend exclusion of Marconi under these circumstances.

advise VECTOR of the perceived weaknesses in its proposal. To illustrate our conclusion, we will discuss in detail one of these issues—VECTOR's contention regarding the HM&E experience of the personnel proposed for task I.

The RFP explained that "[t]ask I covers Operation and Maintenance of the Large Scale Vehicle [LSV], KOKANEE, . . . including hull, mechanical, electrical and command and control systems (HME&CC)" RFP at 6. With regard to personnel for task I, the RFP required that each resume identify the qualifications of the proposed individual relevant to the statement of work (SOW). RFP at 120, 123. VECTOR argues that the Navy wrongly downscored its proposal because its personnel lacked LSV HM&E experience, and contends that LSV HM&E experience was not identified as a requirement in the RFP's stated evaluation scheme. According to VECTOR, if it "had been on notice of the Navy's intent to evaluate for **specific LSV experience**, VECTOR could have materially changed its proposal to meet the Navy's unstated requirements." VECTOR's Comments, June 21, 1999, at 19.

As an initial matter, VECTOR's contention that the Navy has violated the RFP's evaluation scheme is based on a provision in the solicitation that has no application to the subfactor at issue here. Specifically, VECTOR's comments on the agency report quote the requirements for the corporate experience evaluation factor to support its argument that the solicitation did not require that proposed personnel have experience in LSV HM&E. VECTOR's Comments, supra, at 18. Instead, the appropriate starting point for this analysis is the RFP's guidance for the proposed personnel subfactor under the task I evaluation factor.

Under the proposed personnel subfactor, the RFP's evaluation scheme stated that:

The offeror's proposal in this area will be evaluated based on the degree to which the personnel proposed implement the staffing plan and are consistent with the staffing plan requirements and demonstrate specific experience to complete the SOW.

RFP at 146. Since the SOW here involves the operation, maintenance and HM&E of an LSV—the KOKANEE—we fail to see how VECTOR was unfairly treated when the Navy noted that its proposed personnel lacked experience with LSV HM&E. In addition, the evaluation record here shows that the reason for downgrading VECTOR was not limited to the lack of LSV experience, but was also due to the fact that the HM&E experience of certain of its proposed personnel was not recent. Final Technical Evaluation, Apr. 1, 1999, encl. 4 at 4.

For the record, we further note that VECTOR's own filing undercuts its argument that it was not on notice that the Navy was examining HM&E experience with an eye towards experience with LSVs. Specifically, VECTOR's comments set forth several discussion questions from the Navy focusing on this very issue. VECTOR's Comments, supra, at 19-20. Of particular interest here, the Navy asked:

[VECTOR's] proposed HM&E Lead, Mr. [DELETED] doesn't meet the stated experience requirements in the Staffing Plan (Table 1.2-3). His HM&E experience does not constitute 10 years, in both the O&M of HM&E systems and the supervision of technical team performing submarine HM&E maintenance. He has no LSV HM&E experience. . . .

Letter from Contracting Officer to VECTOR attach. 1, at 4 (Jan. 11, 1999) (emphasis added).

Under these circumstances, we conclude that the Navy reasonably considered prior LSV experience in reviewing proposed personnel; that LSV experience was not the only basis for the downgrading of VECTOR's proposal under this subfactor; that VECTOR has not shown that the evaluation was unreasonable; and that VECTOR has no credible basis to argue that it was not on notice of the Navy's intent to evaluate prior LSV experience.

The protest is denied.

Comptroller General
of the United States